

ORIGINAL

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CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

2022 SEP 26 PM 1:33

**LUCAS HORTON,
Plaintiff,**

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DEPUTY CLERK

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v.

**Sunpath, LTD
Defendant.**

3-22CV2130-N

Plaintiff Lucas Horton ("Plaintiff") brings this Complaint against Sunpath, LTD. ("Defendant") for Defendant's practice of making calls to consumers without the required business license to do so. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief.

JURISDICTION & VENUE

The Court has subject matter jurisdiction over this action pursuant to TX Business and Commerce Code 302.101. The court has general personal jurisdiction because the Defendant has repeatedly placed calls or has calls placed on their behalf to Texas residents, sold goods and services to Texas residents, and derived revenue from Texas residents, including the Plaintiff on 4 separate occasions. The court has general personal jurisdiction over the Defendant because the Defendant's products are sold by 5 (that is known to the Plaintiff) different companies, meaning it has plenty of contacts in the state. The venue is the proper venue because a substantial part of the events giving rise to this claim occurred in this district, which is also where the Plaintiff lives.

PARTIES

Plaintiff is an individual who resides in Dallas County, Texas. Defendant is a corporation incorporated and existing under the laws of the State of Delaware and whose primary place of business is 12101 Braintree Hill Park, Ste 310 Braintree, MA 02184.

FACTS & FACTUAL ALLEGATIONS

TX 302.101 states that, "A seller may not make a telephone solicitation from a location in this state or to a purchaser located in this state unless the seller holds a registration certificate for the business location from which the telephone solicitation is made." "A person who violates this chapter is subject to a civil penalty of not more than \$5000 for each violation." *Id.* § 302.302.

TX 302.002 states that a person makes a telephone solicitation if the person effects or attempts to effect a telephone solicitation, including a solicitation initiated by an automatic dialing machine or a recorded message device.

The Plaintiff may seek damages under Texas law for violations of the TX 302 of up to \$5000 per violation, reasonable costs of prosecuting the action, court costs, investigation costs, deposition expenses, witness fees, and attorney fees.

The Defendant does not have this certificate in the state of or Texas, which is where the some of the calls came from as evidenced by the 214, 713m & 210 area codes. They do not have the certificate in Delaware either.

Plaintiff was called by (580) 258-2097 on 8/9/2019, by (346) 299-4568 on 8/10/2019, by (310) 596 - 1434 on 8/13/2019, and by (585) 270-4881 on 8/15/2019 . All calls featured a generic message saying the factory warranty was about to expire and that it was your last chance to buy an extended one. On 8/22/2019, he was called by (346) 346-6053 and purchased a warranty that was billed and administered by Sunpath.

Plaintiff was called by (214) 433-8727 on 8/27/2020, (214) 909-8181 on 9/5/2019, (214)-542-6369 on 9/20/2019 and 9/25/2019. All calls featured a pre-recorded message offering an extended car warranty as my factory coverage had or was about to expire. Plaintiff purchased a Sunpath Horizon Diamond New warranty on the 9/25 call sold by National Car Cure, but administered by Sunpath.

Plaintiff was called by (214) 909-7485 on 2/10/2020, and by (214) 909 7902 on 5/11/2020. Again, all calls featured a pre-recorded message offering an extended car warranty as the factory coverage had or was about to expire. Plaintiff purchased a warranty with Contract #HZF082483 to verify the caller's identity on the 5/11/2020 call. This warranty was sold by VAD, but administered by Sunpath.

Plaintiff was called by 254-272-2909 on 3/2/2022, 956-305-6598 on 3/4/2022, and by 512-957-8272 on 3/16/2022. All calls began with a barely audible humming noise and then an operator came on the line a few seconds later with a "courtesy call" because the Plaintiff's car warranty was supposedly about to expire. On the third call, he was able to complete a dummy sale to find out who was behind the calls and purchased an Auto Defender Warranty with contract number HZL022508 that is administered by the Defendant.

All calls were made by or on behalf of the Defendant in an attempt to sell extended auto warranties. While the Plaintiff might not have physically made the all of the calls, they ratified the calls once they accept any monetary benefit from them and are therefore liable.

Under, Texas Business & Commerce Code 301.001, the Defendant would be categorized as either a "Seller" or the "Owner", depending on who actually sold the warranty.

Ignorance of the law is no excuse, although this is probably just disregard. The maximum of the allowable fine is the only way to teach companies like the Defendant. The earliest warranty bought by the Plaintiff was in 2019, so they have been telemarketing here for at least 3 years without the required license. The max of \$5k per call is the only punishment that will teach companies that laws need to be followed. Because it is not just this statute they ignore. It is also the TCPA and Tx Bus & Com 305.053 as well because all of these calls were pre-recorded messages or made by an ATDS to a number on the DNC list.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury of all issues in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lucas Horton prays for judgment against the Defendant as follows:

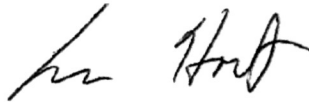
A declaration that the actions herein by the Defendant violate state law.

An injunction enjoining the Defendant and affiliates from engaging in the unlawful conduct set forth herein.

An award of \$5000 for each of the 14 calls in statutory damages per call. Plus any reasonable costs of prosecuting the action, court costs, investigation costs, deposition expenses, witness fees, and attorney fees.

Dated 9/26/2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lucas Horton', is written above a horizontal line.

Lucas Horton
lukeduke365@yahoo.com
1202 Stratford Dr
Richardson, TX 75080
Tel: (214) 909-3341

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lucas Horton

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Lucas Horton, pro se litigant
1202 Stratford Dr, Richardson, Tx 75080

DEFENDANTS

Sunpath LTD

County of Residence of First Listed Defendant Norfolk County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

SEP 26 2022

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 PTF DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input checked="" type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227

Brief description of cause:

TCPA violations of making calls with an ATDS to a consumer on the DNC list

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

76,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/22/2022

SIGNATURE OF ATTORNEY OF RECORD

Lucas Horton, pro se plaintiff

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE